

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY 16 D.C.

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENNESSEE

CURTIS L. BYRD, JR.,

Plaintiff,

vs.

LESLIE I. BALLIN, et al.,

Defendants.

X
X
X
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X

No. 04-2998-D/P

ORDER DENYING PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT
AGAINST DEFENDANT BALLIN

Plaintiff Curtis L. Byrd, Jr. commenced this action by filing a legal malpractice complaint in the Shelby County Circuit Court, docket number CT-005216-04, on September 13, 2004 against defendant Leslie I. Ballin, an attorney who represented Byrd in a federal criminal prosecution arising out of this district. See Notice of Removal, Ex. A. On or about November 15, 2004, plaintiff filed an amended complaint that, for the first time, added the National Bank of Commerce ("NBC") and three individuals, Sheila Burnett, Latoria Johnson, and Patricia Cook, as defendants. See Notice of Removal, Ex. B. The claims against NBC arose under, inter alia, the Right to Financial Privacy Act, 12 U.S.C. § 3401 et seq., and Tennessee law. NBC was served with the amended complaint on November 19, 2004 and removed this action to federal court, pursuant to 28 U.S.C. § 1446(d), on December 9, 2004.

This document entered on the docket sheet in compliance
with Rule 58 and/or 79(a) FRCP on 12/21/05

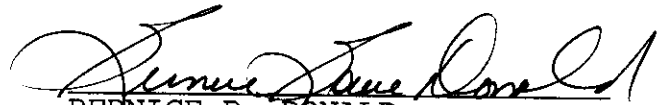
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On December 13, 2004, plaintiff filed a motion seeking summary judgment with respect to his claim against defendant Ballin. Defendant Ballin, through counsel, filed two documents, which the Court construed as a response to the summary judgment motion, on January 13, 2005. That response, inter alia, identified various technical deficiencies in the plaintiff's motion. The Court issued an order on February 4, 2005 denying the plaintiff's motion.

In the meantime, plaintiff filed another motion for summary judgment on January 18, 2005 that purported to correct the technical deficiencies in his original summary judgment motion. Defendant Ballin filed a response to the motion on January 21, 2005,¹ and plaintiff filed a reply on January 24, 2005.

The plaintiff's motion for summary judgment advances no substantive arguments that were not raised in the previous motion.² Accordingly, the Court DENIES the plaintiff's motion for the reasons set forth in the February 4, 2005 order.

IT IS SO ORDERED this 22 day of December, 2005.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE

¹ The technical objection raised in defendant Ballin's response is without merit. Rule 15(a) of the Federal Rules of Civil Procedures pertains to amendments of pleadings, not of motions. The Court's February 4, 2005 order cautioned both parties about the filing of duplicative motions.

² The motion also assumes, incorrectly, that the operative pleading in this case was filed on December 20, 2004. The Court issued an order on August 26, 2005, striking that proposed second amended complaint for failure to obtain leave of Court.



Notice of Distribution

This notice confirms a copy of the document docketed as number 81 in case 2:04-CV-02998 was distributed by fax, mail, or direct printing on December 27, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT